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BEFORE THE DOCKET FILE COPY ORIGINAL

# Federal Communications Commission

WASHINGTON, D.C.

In the Matter of )

Advanced Television Systems )  
and Their Impact Upon the )  
Existing Television Broadcast )  
Service )

MM Docket No. 87-268

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

To: The Commission

## REPLY TO CONSOLIDATED REPLY

Duhamel Broadcasting Enterprises ("DBE"), by its attorneys, hereby submits its Reply to the Consolidated Reply, which was filed on July 30, 1997 by Rapid Broadcasting Company ("RBC") in response to four oppositions to its Petition for Partial Reconsideration of the Commission's Sixth Report and Order in the above-referenced proceeding ("Sixth R&O"). DBE, one of the entities that filed an opposition, is the licensee of KOTA-TV, Channel 3, Rapid City, South Dakota, and KHSD-TV, Channel 11, Lead, South Dakota. RBC is the licensee of low power TV ("LPTV") station KNBN-LP, Rapid City, South Dakota, and the permittee of LPTV stations K27ED and K31DK, both to be located in Rapid City, South Dakota. RBC stated in its Consolidated Reply ("RBC Reply") that the oppositions to its Petition for Partial Reconsideration were untimely and should be disregarded. As shown below, RBC's Consolidated Reply misstates the law as to timeliness and the oppositions must be considered.<sup>1/</sup>

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<sup>1/</sup> DBE recognizes that the Commission's Rules do not normally anticipate the filing of a response to a reply filing. This pleading is being filed solely to correct RBC's misstatement of the law as to the timeliness of DBE's opposition and, to the extent necessary, DBE hereby requests the Commission's leave to file this reply.

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In its Consolidated Reply, RBC argues that all four oppositions to RBC's Petition for Partial Reconsideration were untimely filed and should be dismissed without consideration on that basis. RBC Reply at 1. Relying upon Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, RBC contends that the oppositions had to be filed by May 30, 1997. RBC Reply at 2.

RBC's reliance upon Section 1.106 of the Commission's rules is misplaced. The timing of petitions for reconsideration, oppositions and replies in a rulemaking proceeding are governed by Section 1.429 of the Commission's rules. 47 C.F.R. § 1.429. Even Section 1.106 of the Commission's rules clearly states that "For provisions governing reconsideration of Commission action in notice and comment rulemaking proceedings, see § 1.429. This § 1.106 does not govern reconsideration of such actions." 47 C.F.R. § 1.106(a)(1). As set forth in Section 1.429(f), oppositions in a rulemaking are due "15 days after the date of public notice of the petition's filing." 47 C.F.R. § 1.429(f). As public notice of RBC's Petition for Partial Reconsideration was released on July 3, 1997, the oppositions were due on July 18, 1997. Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings, 62 Fed. Reg. 36,066 (1997). This interpretation is supported by the Federal Register notice which stated that oppositions were due by July 18, 1997. Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings, 62 Fed. Reg. 36,066 (1997); see also Advanced Television Systems and Their Impact on the Existing Television Service, 62 Fed. Reg. 39,128 (1997) (denying a request to consolidate the due date for response to the petitions for reconsideration and repeating that "[r]esponses to petitions for reconsideration . . . are due July 18, 1997."). Thus, the four oppositions filed on July 18, 1997 in response to RBC's Petition for Partial Reconsideration were timely and require consideration.

Accordingly, for the reasons set forth in its opposition to RBC's Petition for Partial Reconsideration, DBE respectfully requests that the Commission deny RBC's Petition for Partial Reconsideration.

Respectfully submitted,

**Duhamel Broadcasting Enterprises**

By: C. Brooke Temple III  
Bruce D. Jacobs  
Scott R. Flick  
C. Brooke Temple III

Its Attorneys

FISHER WAYLAND COOPER LEADER  
& ZARAGOZA L.L.P.  
2001 Pennsylvania Avenue, N.W., Suite 400  
Washington, D.C. 20006  
(202) 659-3494

Dated: July 31, 1997

**CERTIFICATE OF SERVICE**

I, Renee Williams, a secretary in the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., do hereby certify that true copies of the foregoing "**REPLY TO CONSOLIDATED REPLY**" were sent this 31st day of July, 1997, by first class United States mail, postage prepaid, to the following:

David M. Silverman  
Cole, Raywid & Braverman, L.L.P.  
1919 Pennsylvania Ave., N.W.  
Suite 200  
Washington, D.C. 20006  
Counsel for Rapid Broadcasting Company

  
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Renee Williams